

incapable of judging of the propriety or effect of any deed or other * matter which required consideration; and that she had been in that condition some two or three days previous. **396** About four o'clock in the afternoon of the 15th, Dr. Marsh visited the plaintiff and found her apparently asleep, but on being once or twice called by the defendant, the plaintiff roused up, and gave him her hand. The Doctor thinks she answered intelligently to all the questions he asked her. But he declined to answer directly, and say, whether or not she was then in a sound state of mind; and says, that the questions he asked her were not of a nature for him to judge of her sanity. On the next morning, the 16th, Dr. Marsh and Dr. Griffith at nine o'clock, visited the plaintiff, and found her in an apoplectic state, entirely insensible and unable to speak or move; and requiring all the strength of one of them to straighten her arm to bleed her.(o) After being bled she continued to be perfectly comatose, or absorbed in a preternatural sleep, or stupor, until daybreak of the 17th, when she awoke; but was still incoherent in her mind. After which she gradually recovered.

The instrument of writing, which was thus signed on the 15th of June, 1824, had been prepared by Justice Fendal, as he states, for and at the request of the defendant about six months previous; but the defendant admits, in her answer, that she had caused it to be prepared by him in 1822. During the greater part of the interval between the periods of its preparation and execution, the plaintiff had enjoyed her usual state of good health. About six months before this instrument was executed, in a conversation upon the subject of the provision which the plaintiff had promised, or intended to make for the defendant, the plaintiff declared to the defendant, that she would leave here no more than a life-estate in her property. And the plaintiff often before and after made similar declarations. The defendant had always continued to reside with the plaintiff, who had latterly confided the management of her estate very much or altogether to the defendant, who had always conducted herself toward the plaintiff as a dutiful daughter; and the plaintiff had great confidence in the defendant.

Upon the whole then, and after most careful investigation of this case, thus far, there appears to be no one ground upon which this deed can be permitted to stand. It was prepared at the sole instance of the defendant. It was never at any time submitted to * the consideration of the plaintiff, or in her possession for an instant before its execution; and at that time, it was **397** neither read by or to her, or explained to her in any form whatever. *Thoroughgood's Case*, 2 Co. 9. It conveys to the defend-

(o) "A very apoplexy, lethargy, mulled, deaf, sleepy, insensible."—*Coriolanus*, Act 4, s. 5.